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NORM MALENG
PROSECUTING ATTORNEY
CIVIL DIVISION

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

SURRYDOWNS CHILDREN
CENTER, INC., and

KING COUNTY, WASHINGTON;

Respondents.

Docket No. TSCA-10-2005-0151

CONSENT AGREEMENT BETWEEN
KING COUNTY, WASHINGTON, AND
REGION 10 OF THE UNITED STATES
ENVIRONMENTAL PROTECTION
AGENCY

1. That portion of this proceeding pertaining to claims which Region 10 of the United States Environmental Protection Agency (EPA) has against King County, Washington (KC), is being simultaneously commenced and concluded by issuance of this Consent Agreement along with the accompanying Final Order. While this Consent Agreement does contain the terms for a settlement of claims between EPA and KC, this settlement does not impact the outstanding claims which EPA has against Surrydowns Children Center, Inc. (SCC).

2. The pursuit and resolution of claims in this matter are authorized by Section 16 of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615. This Consent Agreement and the accompanying Final Order have been prepared in accordance with the requirements of 40 C.F.R. §§ 22.13(b), 22.14(a)(1)-(3) and (8), 22.18(b)(2), and 22.18(b)(3).

3. EPA alleges that KC committed violations of the regulations promulgated pursuant to Section 6 of TSCA, 15 U.S.C. § 2605. These regulations pertain to the use, storage and disposal of PCBs, and are set forth at 40 C.F.R. Part 761. According to Section 15 of TSCA, 15 U.S.C. § 2614, it is unlawful to fail to comply with these regulations. KC denies this alleged liability.

Consent Agreement
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Surrydowns / King County
TSCA-10-2005-0151

1 4. The particular regulatory violations alleged in this matter occurred at Surrydowns Children's
2 Center, a daycare facility located in Bellevue, Washington. KC was the owner of this property at the
3 time of these alleged violations, and SCC was the operator of the property at the time of the alleged
4 violations. There were several instances of the alleged disposal of PCBs other than in accordance
5 with 40 C.F.R. § 761.60(a). There were also alleged failures to mark an area and a container with
6 PCB labels, as required by 40 C.F.R. §§ 761.40(a)(1), 761.40(a)(10) and 761.65(c)(3). In addition,
7 there was allegedly a container with PCBs that did not meet the specifications of 40 C.F.R.
8 § 761.65(c)(6). Lastly, there were alleged failures to notify EPA about PCB waste handling activity,
9 and to obtain an identification number for PCB waste handling activity, as prescribed by 40 C.F.R.
10 §§ 761.202(b)(1) and 205(a)(2).

11 5. EPA discovered the alleged regulatory violations during inspections conducted in the summer
12 of 2004. Following these inspections, EPA requested that KC and SCC conduct a cleanup of the
13 PCB contamination at the property. KC availed itself of this opportunity and conducted a cleanup
14 of the PCBs at a cost of more than \$80,000. SCC elected not to participate in the cleanup of the
15 property.

16 6. On March 2, 2005, EPA provided written notice to KC and SCC, offering these parties the
17 opportunity to settle the TSCA penalty claims prior to litigation. KC has availed itself of this
18 opportunity, while SCC has not.

19 7. For the purpose of this proceeding, KC admits the jurisdictional allegations contained herein.
20 While KC neither admits nor denies the specific factual allegations set forth herein, KC does waive
21 the right to contest those allegations. KC also waives the right to appeal the accompanying Final
22 Order.

23 8. The penalty amount to be paid by KC has been calculated in accordance with the
24 "Polychlorinated Biphenyls (PCB) Penalty Policy." This policy is a reflection of the criteria for
25 determining a civil penalty which are set forth in Section 16(a)(2)(B) of TSCA, 15 U.S.C.
26 § 2615(a)(2)(B), and is utilized by EPA for the purpose of achieving consistency with other penalty
27 enforcement matters.

1 9. KC consents to the assessment and payment of a civil penalty in the amount of twenty nine
2 thousand five hundred ten dollars and no cents (\$29,510.00). The payment of this penalty shall be
3 made by KC within thirty (30) days of the filing of the accompanying Final Order. This payment
4 shall be by cashier's or certified check made payable to the order of "Treasurer, United States of
5 America." The check shall be submitted to: Mellon Client Services Center, U.S. EPA, Region 10,
6 500 Ross Street, P.O. Box 360903, Pittsburgh, Pennsylvania 15251-6903. Along with the payment,
7 KC shall provide a transmittal letter which sets forth the information contained in the caption of this
8 case, including the case title and docket number, together with a description of the obligation
9 satisfied by such payment. At the time of payment, KC shall provide a copy of the check and
10 transmittal letter to: Carol Kennedy, Regional Hearing Clerk, U.S. EPA, 1200 Sixth Avenue, ORC-
11 158, Seattle, WA 98101; and Richard Mednick, Associate Regional Counsel, U.S. EPA, 1200 Sixth
12 Avenue, ORC-158, Seattle, WA 98101.

13 10. Should there be a failure of KC to pay the penalty assessed herein in full by its due date, the
14 entire unpaid balance of penalty and accrued interest shall become immediately due and owing.
15 Should such a failure to pay occur, KC may be subject to a civil action under Section 16(a)(4) of
16 TSCA, 15 U.S.C. § 2615(a)(4), to collect any unpaid penalties, together with interest, handling
17 charges, and nonpayment penalties, as set forth below.

18 11. Should there be a failure of KC to pay any portion of the penalty assessed herein in full by
19 its due date, KC shall also be responsible for payment of the following amounts:

20 a. Interest. Any unpaid portion of the assessed penalty shall bear interest at the rate
21 established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1) from the effective
22 date of the accompanying Final Order, provided, however, that no interest shall be payable on any
23 portion of the assessed penalty that is paid within 30 days of the effective date of the Final Order.

24 b. Handling Charge. Pursuant to 31 U.S.C. § 3717(e)(1), a monthly handling charge of \$15
25 shall be paid if any portion of the assessed penalty is more than 30 days past due.

26 c. Nonpayment Penalty. Pursuant to 31 U.S.C. § 3717(e)(2), a nonpayment penalty of 6%
27 per annum shall be paid on any portion of the assessed penalty that is more than 90 days past due,
28

1 which nonpayment penalty shall be calculated as of the date the underlying penalty first becomes
2 past due.

3 12. This Consent Agreement is binding upon KC, including all officers, directors, servants,
4 employees, agents, successors, and assigns of KC.

5 13. KC shall bear its own costs and attorneys fees in connection with this matter.

6 14. EPA and KC agree to the accompanying Final Order.

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8 United States Environmental
9 Protection Agency

10 Deborah Flood for
11 Michael A. Bussell, Director
12 Office of Compliance and Enforcement

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Consent Agreement
King County and EPA

King County, Washington

Paul Tanaka
PAUL TANAKA
County Administrative Officer

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8 UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
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10 In the Matter of:

11 SURRYDOWNS CHILDREN
12 CENTER, INC., and

13 KING COUNTY, WASHINGTON;


14 Respondents.

Docket No. TSCA-10-2005-0151

FINAL ORDER

15 It is hereby ordered that King County, Washington (KC), comply with all terms and conditions
16 of the Consent Agreement entered into between KC and Region 10 of the United States
17 Environmental Protection Agency (EPA) in this matter. This compliance obligation is effective upon
18 the date of filing of the Consent Agreement along with this Final Order.

19 This Final Order resolves only those causes of action alleged by EPA against KC in this matter.
20 Neither the Consent Agreement nor this Final Order shall affect, in any way, the allegations, claims,
21 or penalty assessment against Surrydowns Children Center, Inc.. Further, this Final Order does not
22 otherwise waive or extinguish the obligation of KC to comply with all applicable provisions of the
23 Toxic Substances Control Act and the regulations promulgated thereunder.
24

25 
26 Ronald A. Kreizenbeck
27 Acting Regional Administrator
28 EPA, Region 10

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER** in **In the Matter of: Surrydowns Children Center, Inc., and King County, Washington, DOCKET NO.: TSCA-10-2005-0151** was filed with the Regional Hearing Clerk on June 01, 2005.

On June 01, 2005 the undersigned certifies that a true and correct copy of the document was delivered to:

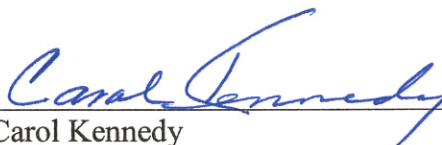
Richard Mednick, Esquire
U.S. Environmental Protection Agency
1200 Sixth Avenue, ORC-158
Seattle, Washington 98101

Dan Duncan
U.S. Environmental Protection Agency
1200 Sixth Avenue, OCE-084
Seattle, Washington 98101

Further, the undersigned certifies that a true and correct copy of the aforementioned document was placed in the United States mail certified/return receipt on June 01, 2005 to:

David H. Eldred
Senior Deputy Prosecuting Attorney
Office of the Prosecuting Attorney
King County, Civil Division, Tort Section
900 King County Administrative Building
500 Fourth Avenue
Seattle, Washington 98104

DATED this 01st day of June 2005.



Carol Kennedy
Regional Hearing Clerk
EPA Region 10